Madison County, Iowa.

State Highway Commission #1992 Filed for record the 4 day of Sept., A. D. 1931 at 1:50 o'clock P. M.,

To Fee $13.70 ✓

Mildred E. Knott Recorder

District Court
Madison County.

IN THE MATTER OF THE CONDEMNATION OF CERTAIN REAL ESTATE FOR PRIMARY ROAD PURPOSES BY THE STATE HIGHWAY COMMISSION OF THE STATE OF IOWA, IN MADISON COUNTY.

Project No. P-173
NOTICE OF APPEAL

TO C. C. Hakes of Muscatine, Iowa, and to Titus Loan and Investment Company, Muscatine, Iowa, and to John K. Sawyer, Sheriff of Madison County, Iowa:

You are hereby notified that the Condemnor, State Highway Commission of the State of Iowa, of the real estate located in Madison County, Iowa, and of which you, the said C. C. Hakes, are the record title owner, and the Titus Loan and Investment Company, the holders and owners of two certain mortgages thereon, said real estate being described as follows, to-wit:-

Commencing at the N. W. Corner of the SW¼ SE¼ Sec. 14, T74N, R28W, thence S 51.31 ft. to the point of beginning: Thence N 42 deg. 52 min. E 798.63 ft., thence N 41 deg. 26 min. 4 sec. E 400.12 ft., thence N 42 deg. 52 min. E 681.79 ft., thence S 0 deg. 50 min. E 173.69 ft., thence S 42 deg. 52 min. W 556.22 ft., thence S.44 deg. 17 min. 56 sec. W 400.12 ft., thence S 42 deg. 52 min. W 1569.4 ft., thence Southwesterly 1119.89 ft. along a 1860 ft. radius curve concave easterly and with a central angle of 34 deg. 30 min. thence S 8 deg. 22 min. W 948.05 ft., thence S 89 deg. 47 min. W 101.13 feet, thence N 8 deg. 22 min. E 963.14 ft., thence Northeasterly 1180.11 ft. along a 1960 ft radius curve concave easterly and with a central angle of 34 deg. 30 min., thence N 42 deg. 52 min. E 770.77 ft. to the point of beginning, containing 11.15 acres, more or less. Note: The west line of the SW¼ SE¼ Sec. 14 is taken as due North and South.

That said land having been condemned for Primary road purposes that the condemnor, State Highway Commission of Iowa hereby appeals to the District Court of Madison County, Iowa from the assessment and award of damages made by the condemnation Commissioners in said matter, and dated March 14th, 1930, in which said award you were awarded the Sum of Twelve Thousand Two Hundred and Fifty Dollars ($12,250.00), for the taking by the State Highway Commission of the State of Iowa, of the above described real estate. And you are further notified that such appeal will be heard by said court at the May Term thereof, which will commence on May 6th, 1930, or as soon thereafter as the same may be reached. You are further notified that the Petition of Appellant, Condemnor, will be filed in the office of the Clerk of the District Court of Madison County, Iowa, on or before the first day of the said May Term, stating the items of damage and the amount thereof which the Condemnor believes should be paid.

Signed this 7th day of April, A. D. 1930.

State Highway Commission of the State of Iowa.

By Maxwell A. O'Brien
Assistant Attorney General.
Attorney for the State Highway Commission.

State of Iowa)
) SS.
Madison County)

I, John K. Sawyer, Sheriff of Madison County, Iowa, hereby certify that I received the within Notice of Appeal on the 8th day of April 1930 and on the 8th day of April 1930 I accepted service of the same.

John K. Sawyer, Sheriff.

STATE OF IOWA, Muscatine County, SS:

I, F. B. Nesper Sheriff of Muscatine County, Iowa, hereby certify that I received the annexed original notice for immediate service on the 9th day of April, A. D. 1930 and that on the 9th day of April, A. D. 1930, at Muscatine Township, in said County, I served the same personally on C. C. Hakes the defendant--named therein; by offering to read said notice to him which reading he refused to hear, and by delivering to him personally a true copy of said notice.

Dated the 9th day of April, A. D. 1930

FEES

Service $.75
Mileage $.60
Total $1.35

F. B. Nesper
Sheriff of Muscatine County, Iowa.
By L. G. Pace Deputy.

STATE OF IOWA, Muscatine County, SS:

I, F. B. Nesper Sheriff of Muscatine County, Iowa, hereby certify that I received the annexed original notice for immediate service on the 9th day of April, A. D. 1930, and that on the 9th day of April, A. D. 19--, at Muscatine Township, in said County, I served the same personally on Titus Loan and Investment Company the defendant named therein; by offering to read said notice to C. C. Hakes, Vice-President of said Company which reading he refused to hear, and by delivering to him personally a true copy of said notice.

Dated the 9th day of April, A. D. 1930

F. B. Nesper
Sheriff of Muscatine County, Iowa.
By L. G. Pace Deputy.

IN THE MATTER OF THE CONDEMNATION OF CERTAIN REAL ESTATE FOR PRIMARY ROAD PURPOSES BY THE STATE HIGHWAY COMMISSION OF THE STATE OF IOWA, IN MADISON COUNTY.

Project No. P-173
NOTICE OF APPEAL

TO C. C. Hakes of Muscatine, Iowa, and to Titus Loan and Investment Company, Muscatine, Iowa, and to John K. Sawyer, Sheriff of Madison County, Iowa:

You are hereby notified that the Condemnor, State Highway Commission of the State of Iowa, of the real estate located in Madison County, Iowa, and of which you, the said C. C. Hakes, are the record title owner, and the Titus Loan and Investment Company, the holders and owners of two certain mortgages thereon, said real estate being described as follows, to-wit:-

Commencing at the N.W. Corner of the SW¼ SE¼ Sec. 14, T74N, R28W, thence S 51.31 ft. to the point of beginning: Thence N42 deg. 52 min. E 798.63 ft., thence N 41 deg. 26 min. 4 sec. E 400.12 ft., thence N 42 deg. 52 min. E 681.79 ft., thence S 0 deg. 50 min. E. 173.69 ft., thence S 42 deg. 52 min. W 556.22 ft., thence S 44 deg. 17 min. 56 sec. W 400.12 ft., thence S 42 deg. 52 min. W 1569.4 ft., thence Southwesterly 1119.89 ft. along a 1860 ft. radius curve concave easterly and with a central angle of 34 deg. 30 min. Thence S 8 deg. 22 min. W 948.05 ft., thence S 89 deg. 47 min. W 101.13 feet, thence N 8 deg. 22 min. E 963.14 ft., thence Northeasterly 1180.11 ft. along a 1960 ft. radius curve concave easterly and with a central angle of 34 deg. 30 min., thence N 42 deg. 52 min. E 770.77 ft. to the point of beginning, containing 11.15 acres, more or less. Note: The west line of the SW¼ SE¼ Sec. 14 is taken as due North and South.

That said land having been condemned for Primary road purposes that the condemnor, State Highway Commission of Iowa hereby appeals to the District Court of Madison County, Iowa from the assessment and award of damages made by the Condemnation Commissioners in said matter, and dated March 14th, 1930, in which said award you were awarded the Sum of Twelve Thousand

Two Hundred and Fifty Dollars ($12,250.00), for the taking by the State Highway Commission of the State of Iowa, of the above described real estate. And you are further notified that such appeal will be heard by said court at the May Term thereof, which will commence on May 6th, 1930, or as soon thereafter as the same may be reached. You are further notified that the Petition of Appellant, Condemnor, will be filed in the office of theClerk of the District Court of Madison County, Iowa, on or before the first day of the said May Term, stating the items of damage and the amount thereof which the Condemnor believes should be paid.

Signed this 7th day of April, A. D. 1930.

State Highway Commission of the State of Iowa.

By Maxwell A. O'Brien
Assistant Attorney General.
Attorney for the State Highway Commission.

Project No. P-173

County Madison Voucher No.31
April 12, 1930

THE STATE OF IOWA PRIMARY ROAD FUND TO MADISON COUNTY CLERK OF DISTRICT COURT
WINTERSET, IOWA DR.

DATE	ITEMS	QUANTITY	RATE	AMOUNT
1930				
April 12	Fee for filing petition in the matter of appeal from condemnation commission's award in the case of C. C. Hakes,			1.50

O. K./C. R. Jones

Ext. and Ftgs. Chkd.
By M. A. Clem,
Aud't by M. A. Clem,
O. K./E. T. Burk

PAID BY PRIMARY ROAD CONTINGENT FUND WARRANT

RIGHT OF WAY CLASSIFICATION
BF 4-12-30

TOTAL 1.50

IN THE DISTRICT COURT OF IOWA IN AND FOR MADISON COUNTY.

STATE HIGHWAY COMMISSION OF THE STATE OF IOWA, Plaintiff.

vs

C. C. HAKES and TITUS LOAN & INVESTMENT COMPANY, Defendants.

PETITION AT LAW.

Comes now the plaintiff and for cause of action states:- That pursuant to the provisions of Chapter 366, Code of 1927, and the Laws of the State of Iowa, the plaintiff, State Highway Commission of Iowa, condemned certain land of the defendant C. C. Hakes, for Primary Road purposes. Said land so condemned by the plaintiffs in Madison County Iowa being and described as follows to-wit

Commencing at the NW Corner of the SW¼ SE¼ Sec. 14. T74N. R28W, thence S 51.31 feet, to the point of beginning. Thence N 42 deg. 52 min. E 798.63 feet. thence N 41 deg. 26 min. 4 sec. E 400.12 ft., thence N 42 deg. 52 min. E 681.79 ft., thence S 0 deg. 50 min. E 173.69 feet, thence S 42 deg. 52 min. West 556.22 ft., thence S 44 deg. 17 min. 56 sec. W 400.12 ft., thence S 42 deg. 52 min. West 1569.4 ft., thence Southwesterly 1119.89 feet, along a 1860 ft. radius curve concave easterly and with a central angle of 34 deg. 30 min. thence S 8 deg. 22 min. W 948.05 ft., thence S 89 deg. 47 min. W 101.13 ft., thence N 8 deg. 22 min. E 963.14 ft., thence Northeasterly 1180.11 ft. along a 1960 ft. radius curve concave easterly and with a central angle of 34 deg. 30 min. thence N 42 deg. 52 min. E 770.77 feet, to the point of beginning, containing 11.15 acres, more or less. Note: The west line of the SW¼ SE¼ Sec. 14 is taken as due North and South.

The defendant Titus Loan & Investment Company, a corporation organized and authorized to do business under the laws of the State of Iowa, with principle place of business at Muscatine, Iowa, is the owner and holder of two mortgages upon the foregoing described real estate. That pursuant to said condemnation proceedings and the Statutes of this State, a Commission appointed to award damages by reason of the taking of said land, met on the 14th day of March A. D. 1930, and viewed the premises hereinbefore described and awarded the defendants herein the Sum of Twelve Thousand Two Hundred and Fifty Dollars, ($12,250.00) damages. Said condemnation proceedings showing the Application for the Commission, the appointment of the Commission, Notices and return thereof, and the award of the Condemnation Commission are filed in this proceeding as required by law, by the Sheriff of Madison County, Iowa,

and are by this reference made a part thereof as though fully set out at length herein.

The plaintiff herein appeals from the award of said Condemnation Commission and the assessment of damages to the defendants, and states that the defendants have not been damaged by reason of the condemnation and taking of said land to exceed the following items, to-wit:-

Land taken-11.16 acres----------	$1395.00
General damages to the farm as a whole- ----------	$5000.00
Total	$6395.00

WHEREFORE, the plaintiff prays that the defendants be awarded damages for the taking and condemnation of said real estate in a sum not to exceed Six Thousand Three Hundred Ninety Five Dollars, ($6,395.00) and that in the event the verdict of the jury herein is for a less amount than the award of the condemnation commission that the plaintiffs have judgment against the defendants for the costs of this action.

Maxwell O'Brien
Assistant Attorney General, Attorney for The State Highway Commission of Iowa, Plaintiff.

IN THE DISTRICT COURT OF IOWA IN AND FOR MADISON COUNTY.

The State Highway Commission of the State of Iowa, Plaintiff,	MOTION
vs.	TO
C. C. Hakes and Titus Loan & Investment Company, Defendants.	STRIKE PETITION.

Come now C. C. Hakes and Titus Loan & Investment Company and move that the Court strike from the files the petition filed herein by the State Highway Commission of the State of Iowa, as plaintiff, and against C. C. Hakes and Titus Loan & Investment Company, as defendants, for the following reasons and upon the following grounds:

1. It appears upon the face of said petition that the State Highway Commission of the State of Iowa, named as plaintiff therein, is the applicant for condemnation of certain real estate owned by C. C. Hakes and that the said State Highway Commission of the State of Iowa has appealed from an award of damages made to the said C. C. Hakes and Titus Loan & Investment Company by a condemnation commission.

2. It is specifically provided by Section 7841 of the Code, 1927, that where an appeal is taken, after an assessment is made by a condemnation commission, in eminent domain proceedings, the appeal shall be docketed in the name of the owner of the land as plaintiff and in the name of the applicant for condemnation as defendant.

3. It is specifically provided by Section 215 of the Acts of the Forty-third General Assembly that when an appeal is taken from an award made by a condemnation commission a written petition shall be filed by the plaintiff on or before the first day of the term to which the appeal is taken, stating specifically the items of damage and the amount thereof.

4. That the parties named as defendants in said petition and who are by statute constituted the plaintiffs when an appeal is taken from an award made by a condemnation commission in eminent domain proceedings, have filed a petition as required by the statutes hereinabove designated, which said petition is by this reference made a part hereof.

5. That the petition filed by the State Highway Commission of the State of Iowa, as Plaintiff, and a inst the owner and mortgagee of the real estate, as defendants, is not authorized by statute, and is contrary to the express provisions of the statutes prescribing procedure in such appeals.

6. That said petition is immaterial, irrelevant and redundant.

Percival & Wilkinson
Thomas J. Bray
Attorneys for C. C. Hakes and Titus Loan & Investment Company.

IN THE DISTRICT COURT OF IOWA IN AND FOR MADISON COUNTY.

C. C. Hakes and Titus Loan & Investment Company of Muscatine, Iowa, Plaintiffs, vs. State of Iowa and Iowa State Highway Commission, Defendants.

No. 14658 Law.
MOTION TO STRIKE PARTS OF ANSWER.

Come now the plaintiffs and move that the Court strike from the answer filed herein by the defendants the following parts thereof for the reasons hereinafter set forth:

1. That part thereof commencing in the third line from the bottom of page 1 and ending in the fifth line of page two and reading as follows:

"but defendants allege that prior to the establishment of the highway through said land as referred to in petition of Plaintiffs and prior to the condemnation of the strip of land required for said new highway approximately eight (8) acres of said land was covered by and used for highway purposes and Plaintiffs were by reason thereof deprived of the use of said eight (8) acres of said real estate for agricultural or grazing purposes,"

for the reason that the same is immaterial, irrelevant and redundant, and constitutes no defense to the cause of action alleged in plaintiffs' petition.

2. That part of the first Paragraph on page four of said answer reading as follows:

" and denies that the market value of said tract at said time was in excess of Sixteen Thousand($16,000.00) Dollars,"

for the reason that said language purports to be the denial of and express allegation in plaintiffs' petition which is not contained in said petition, and it is wholly immaterial, irrelevant and redundant.

3. That part of the second Paragraph on page four of said answer reading as follows:

"and they deny that the difference in the fair and reasonable market value of said farm before and after the alleged condemnation exceeds the sum of Four Thousand ($4,000.00) Dollars",

for the reason that said language purports to be the denial of an express allegation contained in plaintiffs' petition which is not in said petition, and the same is immaterial, irrelevant, redundant and surplusage.

Percival & Wilkinson
Thomas J. Bray
Attorneys for Plaintiffs

IN THE DISTRICT COURT OF IOWA IN AND FOR MADISON COUNTY.

C. C. Hakes and Titus Loan and Investment Company of Muscatine, Iowa, Plaintiffs, vs. State of Iowa, and Iowa State Highway Commission, Defendants.

No. 14658 Law.
MOTION TO STRIKE PETITION ON CROSS-APPEAL.

Come now the plaintiffs and move that the Court strike the "Petition on cross appeal" filed herein by the defendants on the 20th day of May, 1930, on the following grounds and for the following reasons:

1. That There is no provision in the statute for filing a petition on cross appeal in a case of this nature; that said petition on cross appeal is wholly unnecessary and unduly encumbers the record in this cause; that the defendants are not entitled to any affirmative relief in this cause; that the reaffirmation and restatement of the allegations of defendant's answer and amendment thereto are not proper allegations in a petition and do not constitute a petition in any event; and that the language contained in said pleading is argumentative.

2. That it is specifically provided by statute that where an appeal is taken from damages awarded in condemnation proceedings the appeal shall be docketed in the name of the landowner as plaintiff and in the name of the applicant for condemnation as defendant, and that a written petition shall be filed by the plaintiff; that the plaintiffs in this cause have filed a petition in accordance with the provisions of the statutes; that heretofore the defendants filed a petition in connection with their appeal and said petition was, on the motion of the

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plaintiffs, stricken from the files; that the ruling of the court on the motion filed by the plaintiffs to strike said former petition is an adjudication against the right of the defendants to file a petition herein and constitutes the law of this cause.

Percival & Wilkinson
Thomas J. Bray
Attorneys for Plaintiffs.

IN THE DISTRICT COURT OF IOWA IN AND FOR MADISON COUNTY

C. C. Hakes et.al. Plaintiffs) (Number 14658 Law

vs (Amendment to answer.
and
State of Iowa, et.al. Defendants) (Cross-Petition.

Come now defendants and amend their answer heretofore filed herein and state that the word "west" should be and the same is hereby stricken from each of lines numbered 20 and 21 of page two of said answer and the word "east" substituted therefor in each instance.

For further amendment they state that they deny the soil on said farm is fertile and productive, and allege the truth to be that on much of said farm the soil has been robbed of its former fertility, through continuous cropping, and much of it and especially of the portion embraced within the 11.15 acre strip condemned, is eeopy and wet spouty land, and not sufficitly tiled if at all. Defendants admit that said farm is improved with buildings and fences, but allege that the same are in need of repairs and rehabilitation.

Petition on Cross-Appeal.

Defendants herein the State of Iowa, and Iowa State Highway Commission, as a basis for affirmative relief upon their cross-appeal, taken herein with leave of court first had and obtained state that they re-affirm and restate the allegations of their original answer and amendment thereto and further state:

That the amount allowed and awarded by the condemnation Jury on March 14th, 1930, was and is unjust and excessive, and should be reduced to an amount not exceeding $6250.00 as shown by the answer of these defendants.

Wherefore they prays as heretofore.

John Fletcher Attorney General
Maxwell A. O'Brien Asst. Atty Gen'l and ..... C. A. Robbins Atty For Defts.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR MADISON COUTY

C. C. Hakes and Titus Loan & Investment Company of Muscatine, Iowa, Plaintiffs, — At Law

vs — No. 14658

State of Iowa and Iowa State Highway Commission, et al, Defendants. — A N S W E R.

Come now the Defendants, The State of Iowa and the Iowa State Highway Commission, and for answer to the petition of the appellants, C. C. Hakes and Titus Loan & Investment Company of Muscatine, Iowa, state:

That they deny each and every allegation of the petition of the Plaintiffs not hereinafter admitted to be true or otherwise responded to.

That Defendants answering admit that the Plaintiff, C. C. Hakes, is the owner of the real estate described on the first page of said petition and that the Plaintiff, Titus Loan & Investment Company of Muscatine, Iowa, is the owner and holder of certain mortgages thereon in the aggregate sum of Thirty Thousand ($30,000.00) Dollars as alleged therein.

Defendants admit that the tract of real estate described contains two hundred forty (240) acres but defendants allege that prior to the establishment of the highway through said land as referred to in petition of Plaintiffs and prior to the condemnation of the strip of land required for said new highway approximately eight (8) acres of said land was covered by and used for highway purposes and Plaintiffs were by reason thereof deprived of the use of said eight (8) acres of said real estate for agricultural or grazing purposes.

Defendants admit the institution of the condemnation proceedings referred to on page two of petition of Plaintiffs and that the description and extent of the land sought to be condemned by Defendants is as therein stated.

Defendants answering admit that they have condemned the parcel of land mentioned in said petition for the purpose of constructing a highway thereon which will be known and designated as Primary No. 16 and that the same will be constructed substantially as alleged in the last six lines of page two of said petition.

Defendants specifically deny that it will be impossible to drive cattle and hogs across said highway and deny that it will be hazardous to cross the same with teams and farm implements and in addition thereto they allege that the said highway project contemplates a stock pass 5'x7' beneath the surface of said highway connecting the pasture land East of the barn and other buildings and East of said proposed highway with the lands on the opposite side of said highway, the same being located conveniently to the barn lots upon said premises and in addition thereto a like stock pass is to be provided near the southwest corner of the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section Fourteen (14) of said land which stock passes would enable Plaintiffs and others operating said land to move stock from one side of the proposed highway to the other at each of said points without crossing over the surface of said highway.

Defendants answering deny that the use of 8.36 acres of said ground will be lost along the fences which will be built along said highway and they deny that the value of the use there of will be depreciated as alleged.

Defendants deny that the location of said highway through and across said land will increase the weed growth on any portion of said land and deny that the cost of cutting any weeds which may be required to be cut will be increased by reason of the establishment of said highway through and across said land.

Defendants answering admit that 11.15 acres of the East One Hundred Sixty (160) acres of said Two hundred forty (240) acre tract will be required for the construction of the proposed highway and they deny that the reasonable market value of the same is $2787.50 and they allege that said fair and reasonable market value of said tract is not to exceed the sum of Fourteen Hundred ($1400.00) Dollars.

Defendants deny that the cost of constructing and maintaining the new fences required along the land condemned for highway purposes is in the sum of $2232.00 as alleged by Plaintiffs and alleges that the cost of constructing said fences will not exceed the sum of Eight Hundred Fifty ($850.00) Dollars.

Defendants deny that the market value of the west eighty(80) acres of said farm will be reduced in the sum of Fifty ($50.00) Dollars per acre by reason of the location of said highway and allege that the market value of said eighty (80) acres will not be reduced by reason thereof in any sum or amount whatever!

Defendants deny that the fair and reasonable market value of the East One Hundred Sixty (160) acres of said farm being the portion thereof intersected by said highway was at the time of said condemnation in the sum of $29,800.00 as alleged and denies that the market value of said tract at said time was in excess of Sixteen Thousand ($16,000.00) Dollars.

Defendants allege that the difference in the fair and reasonable market value of the One Hundred Sixty (160) acre tract before and after the establishment of said highway will not exceed the sum of Twenty-five ($25.00) Dollars per acre or the sum of Four Thousand $4,000.00) Dollars and they deny that the difference in the fair and reasonable market value of said farm before and after the alleged condemnation exceeds the sum of Four Thousand ($4,000.00) Dollars.

WHEREFORE, Defendants pray that the plaintiffs be awarded damages for the taking and

condemnation of said real estate and that they be required to pay the costs of this appeal.

Maxwell O'Brien
ASSISTANT ATTORNEY GENERAL

John Fletcher
ATTORNEY GENERAL
and C. A. Robbins
ATTORNEYS FOR THE DEFENDANTS

C. C. Hakes and Titus Loan and Investment Company, plaintiff,
vs.
State of Iowa, and Iowa State Highway Commission et al, defendants,
No. 14658.

and

The State Highway Commission of the State of Iowa, plaintiff,
vs.
C. C. Hakes and Titus Loan and Investment Company, defendants,
Ruling on Motions.
No. 14660'

In accordance with the Statute the Highway Commission instituted proceedings to condemn a right of way across certain lands of which C. C. Hakes is the title holder and on which the Titus Loan and Investment Company holds a mortgage. After the appraisers made their award a notice of appeal to the Court was served by the title holder and mortgagee on the one hand, and by the highway commission on the other; that is the condemnor and the title holder each appealed, and served notice on the other. When these notices were filed in the office of the Clerk two separate cases were docketed. Each party also filed a petition, apparently acting under Chapter 213 of the Acts of the Forty third General Assembly. The Statute provides that on appeal the case shall be docketed in the name of the owner of other party interested as plaintiff, and in the mane of the party seeking condemnation as defendant, and the Forty third General Assembly required that the plaintiff file the petition setting out specifically the items of damages and the amount thereof. Consequently it devolved on Hakes and the Titus Company to file the petition, and hereafter they will be referred to as plaintiff, and the Highway Commission as defendants; the case is herefore correctly entitled in Case No. 14558, and the petition filed by the land owner properly docketed there, The plaintiff has filed a motion to strike the petition filed by the defendants, and the defendants have filed a motion to consolidate the two cases docketed; in as much as the notices of appeal were separately docketed, the motion to consolidate will be and is sustained, and in as much as the petition filed by the Highway Commission was unnecessary, the motion to strike the petition is sustained, and it is stricken from the files; the effect of this of course is not to dismiss the appeal; the cases are therefore colsolidated under No. 14658, and each party excepts to each adverse ruling.

The defendant has filed a motion to strike the petition ofplaintiff filed as required by statute, and has also filed a motion to strike various parts of it. This statute is new , and we are without precedent.

Plaintiff in argument took the position that the entire course of the trial, even including the measure of damages to be adopted, was changed, and that the evidence should be introduced as to the separate items of damage, and from those items the jury return the verdict, while defendant contended that the rules as to admission of testimony and measure of damages were not changed, and that instead of setting out the different items of damage plaintiff should only state the value of the real estate before and after the taking.

I am not inclined to agree fully with either counsel. In my judgment the measure of damages remains the same as heretofore, and the admissibility of testimony has not been changed by the enactment of this statute,

I also believe that the Statute contemplates the filing of a petition setting out more than the mere value of the land before and after the taking, which is the measure of damages. The value of the land after the taking is affected by numerous matters which arise out of the taking; new fences will have to be erected, cultivation of fields will be made more difficult by lessening the size of the fields and making point rows, land will be actually used, so that the acerage will be lessened, there will be some inconvenience by reason of the cutting of the farm into separated parts. None of these matters are matters for which the jury can allow

damages each by itself, yet they are the various matters which the jury will take into consideration in determining the difference in value, and which the witnesses will consider in fixing the value after the taking.

The first paragraph of the motion to strike, being the motion to strike the entire petition is overruled.

The second paragraph of the motion, being the motion to strike the third paragraph of the petition is overruled; the third paragraph of the petition is merely descriptive of the farm, and is, I think, entirely proper.

The third paragraph of the motion to strike, being a motion to strike a part of the third paragraph of the petition is for the same reason, overruled.

The fourth paragraph of the motion to strike, being the part asking that the words "and assessed the damages thereto in the sum of $12250.00" is sustained; that is wholly immaterial, and should not come to the knowledge of the trial jury.

The fifth paragraph of the motion to strike is overruled; that paragraph sets out the various elements which enter into the damages which plaintiff claims he will sustain.

The sixth paragraph of the motion to strike will have to be overruled; it is too broad; I am inclined to think that some of the matters included within the motion might well come out, and that evidence ought not to be received as to them, but some of the matters are in my judgment proper.

Each party excepts to each adverse ruling.

W. S. Cooper Judge.

IN THE DISTRICT COURT OF IOWA IN AND FOR MADISON COUNTY.

C. C. HAKES, and TITUS LOAN & INVESTMENT COMPANY, Plaintiffs.

vs

STATE OF IOWA AND IOWA STATE HIGHWAY COMMISSION, et al. Defendants.

At Law #14658

MOTION TO CONSOLIDATE.

Comes now the defendants and herewith move the Court to consolidate this action with cause #14660 law, in the District Court of Madison County, being the case entitled State Highway Commission of the State of Iowa, plaintiff, vs C.. C. Hakes and Titus Loan & Investment Company, defendants, and for reason shows to the Court:

Par. 1. That the action herein referred to is identical with this action, both being appeals from the award of the condemnation commission appointed under the provisions of Chapters 365 and 366, Code of Iowa 1927, both cases involving identical issues, the identical property and the same parties. In each case the sole question to be determined is the amount of damages to which C. C. Hakes and Titus Loan & Investment Company are entitled because of the taking of certain land for Primary Road purposes by the State Highway Commission of Iowa.

WHEREFORE, the defendants in this action, State of Iowa and State Highway Commission, move the Court to consolidate this cause with cause #14660 law, entitled State Highway Commission of the State of Iowa vs C. C. Hakes and Titus Loan & Investment Company, and that said causes be ordered tried together.

C. A. Robbins
Attorneys for the Defendants.

John Fletcher
Attorney General
Maxwell A. O'Brien
Assistant Attorney General.

IN THE DISTRICT COURT OF IOWA IN AND FOR MADISON COUNTY.

May Term A. D. 1930.

C. C. Hakes and Totus Loan & Investment Company of Muscatine, Iowa. Plaintiffs.

vs

State of Iowa and Iowa State Highway Commission. Defendants.

MOTION TO STRIKE.

Comes now the defendants and move to strike from plaintiff's Petition the following allegations, to-wit:

1. All of the plaintiff's Petition for the reason that the same fails to comply with the provisions of Chapter 213 Laws of the 43d General Assembly, and said Petition is composed of matter which is surplus, redundant and argumentative, consisting of evidentuary facts and claims of the plaintiffs which are not proper pleading.

2. To strike all of the third paragraph beginning on the first page of the Petition and ending on the second page thereof, for all of the reasons hereinbefore stated.

3. To strike the third paragraph beginning on page one of plaintiff's Petition the following language. "and consists of fertile and productive soil, improved by buildings, fences and drain tile, which is well adapted to stock raising and the production of grains;*******; that said farm is well located, being about ten miles from Winterset, the county seat of Madison county, and about six miles from the town of Lorimor in said county,***. for all the reasons hereinbefore stated.

4. To strike from the first paragraph commencing on page 2 of Plaintiff's Petition the following language,"***, and assessed the damages thereto in the sum of $12,250.00, ***." for all the reasons hereinbefore stated, and for the additional reason that it is improper to plead or refer in the trial of this case in the District Court to the award made by the condemnation commission.

5. To strike from plaintiff's Petition the following parts of the second paragraph on page 2 thereof, to-wit: "***; that in constructing said highway a grade will be built, cuts and fills will be made, and paving will be constructed upon said grade; that said highway will carry a large volume of traffic; that four of the six forty acre tracts constituting said farm will be bi-sected and severed by said highway in such a manner that the land on either side thereof will be left in fields of irregular size and shape; that the land taken for said purpose is the most productive and valuable land in said farm; that the fields composing said farm will be left in such condition and shape that they cannot be operated with power machinery; that the cost of operating said farm will be greatly increased by reason of the location of said highway; that substantially one hundred acres of said farm will be left on the east and south side of said highway, and will be severed from the balance of the farm and from the buildings located upon the farm; that the land taken from said farm for highway purposes as aforesaid will be left unfenced, and that it will be necessary to construct and forever maintain 558 rods of fence, in addition to the fences now existing; that the width of the land condemned for highway purposes is from one hundred feet to one hundred twenty feet, and that it will be necessary to keep the weeds cut which will grow within said highway right of way; that in addition to the land condemned for highway purposes the use of 2.36 acres of said farm along the fences will be lost, and the weeds which will grow along said fences will have to be cut, and a great amount of labor will be entailed in so doing; that in operating said farm it will be necessary to cross said highway with livestock, teams, wagons and farming implements, and it will be impossible to drive cattle and hogs across said highway and that it will be hazardous to cross the same with teams and farm implements; that prior to the condemnation of said land there were no pointed rows in any of the fields of said farm; that by reason of the condemnation of said land all of the fields in the four forty acre tracts thereof intersected by said highway will have pointed rows and the cost of operating the farm will be greatly enhanced by reason thereof; that there will be many corners in said farm which cannot be cultivated at all, because of the sharp points which will be left in the corners of the fields after said highway is constructed; and that the location and existence of said public highway through said farm will be a great inconvenience in the use and operation of said farm and will greatly lessen the value thereof and render the

same unsalable." for all the reasons hereinbefore stated.

6. To strike from the paragraph commencing on page four of plaintiff's Petition the following allegations:- " That by reason of the condemnation, taking and appropriation of said land for highway purposes, as aforesaid, the plaintiffs have sustained great damages, not only for the value of the land taken, but for injuries resulting to the balance of said land by reason of the use to be made of that portion of the farm which has been condemned;***; that the cost of constructing amd maintaining fences along the land condemned for highway purposes as aforesaid is the sum of $2232.00; that the fair and reasonable value of the cost of cutting the weeds within the right of way and along the fences of said highway is the sum of $1500.00; that the fair and reasonable value of the loss of the 2.36 acres of ground along the fences which will have to be built along said highway and which cannot be farmed is the sum of $472.00 that the fair and reasonable market value of the 160 acres of said farm which will be intersected by said highway immediately before the condemnation thereof was $29,800.00; that the fair and reasonable market value of the 148.85 acres of land which will be left in said tract after said land is taken and appropriated for highway purposes is the sum of $14,885.00; that by reason of the condemnation of said land and the construction of said public highway through the same and the inconveniences which will result because thereof and the consequent great reduction in the market value of said farm, the plaintiffs have been damaged in the sum of $14,915.00; that by reason of the condemnation of said land and the construction of said highway and the inconveniences which will result therefrom, the market value of the west eighty acres of said land has been reduced at least $50.00 per acre, and plaintiffs have sustained a damage of $4,000.00 to that portion of said farm; that the aggregate of the items of damage herein above specified is the sum of $25,906.50;***; that the plaintiffs have sustained damage by reason of the condemnation, taking and appropriation of a portion of said land for highway purposes, in the sum of $25,000.00. " for all the reasons hereinbefore stated and for the additional reason that the items hereinbefore quoted are not proper items or elements of damage for which the plaintiffs may recover in this action, and that said items so stated are included in, and a duplication of the items stated in said paragraph of the plaintiffs in the value of the said farm before and after the condemnation. That plaintiffs seek to obtain damages and to show the damage to separate parcels and tracts of said farm, which is improper and not a correct element of damage and irrelevant and redundant in this pleading; that the cost of constructing and maintaining fences is not a proper item or element of damage in this proceeding and is therefore, improper to plead; that the aggregate of the items stated constitute the damage or the difference in the value of the whole farm immediatley before and immediately after the condemnation and is a duplication thereof.

WHEREFORE, the defendants pray that the Court strike the Plaintiff's Petition or the parts thereof hereinbefore set out.

C. A. Robbins
Attorneys for the Defendants.

Maxwell A. O'Brien
Assistant Attorney General.

IN THE DISTRICT COURT OF IOWA IN AND FOR MADISON COUNTY.
May Term, 1930.

C. C. Hakes and Titus Loan & Investment Company of Muscatine, Iowa, Plaintiffs, vs. State of Iowa and Iowa State Highway Commission, et al, Defendants.	:	PETITION ON APPEAL.

Plaintiffs state: That the plaintiff C. C. Hakes, is now and for more than two years last past has been the owner of the following described real estate, situated in Madison County, Iowa, to-wit:

The West Half of the Southeast Quarter (SE¼) and the South east Quarter (SE¼) of the Southwest Quarter (SW¼)

ACME-BLACKMAR CO. BURLINGTON 76106

of Section Fourteen (14), and the North Half of the Northwest Quarter (NW¼) of Section Twenty-three (23), and the Northeast Quarter (NE¼) of the Northeast Quarter (NE¼) of Section Twenty-two (22), all in Township Seventy-four (74) North, Range Twenty-eight (28), West of the Fifth P. M.

That the plaintiff Titus Loan & Investment Company is the owner and holder of two certain mortgages against said real estate in principal sums aggregating the amount of $30,000.00.

That the above described real estate contains two hundred forty acres, and consists of fertile and productive soil, improved by buildings, fences and drain tile, which is well adapted to stock raising and the production of grains; that said land abuts upon a public highway which extends along the north line of the north-/ east forty acres thereof, along the east and south line of the Northeast eighty acres thereof, and along the east line of the Northeast Quarter of the Northwest Quarter of said Section Twenty three, and along the entire distance of the south line of said farm; that said farm is well located, being about ten miles from Winterset, the county seat of Madison County, and about six Miles from the town of Lorimor in said County, and that on the 14th day of March, 1930, the said farm was fairly and reasonably worth on the market the sum of $175.00 per acre, or $42,000.00.

That on or about the first day of February, 1930, the defendants filed with the Sheriff of Madison County, Iowa, an application for the appointment of a commission to condemn a portion of the above described real estate, to-wit:

Commencing at the N. W. Corner of the SW¼ SE¼ Sec. 14, T.74 N. R.28 W, thence S 51.31 ft. to the point of beginning; Thence N. 42 deg. 52 min. E 798.63 ft., thence N 41 deg. 26 min. 4 sec. E 400.12 ft., thence N. 42 deg. 52 min. E 681.79 feet, thence S 0 deg. 50 min. E 173.69 ft., thence S 42 deg. 52 min. W 556.22 ft., thence S 44 deg. 17 min. 56 sec. W 400.12 ft. thence S 42 deg. 52 min. W 1569.4 ft. thence southwesterly 1119.89 ft. along a 1860 ft. radius curve concave easterly and with a central angle of 34 deg. 30 min. thence S 8 deg. 22 min. W 948.05 ft., thence S 89 deg. 47 min. W 101.13 feet, thence N 8 deg. 22 min. E 963.14 ft. thence Northeasterly 1180.11 ft. along a 1960 ft radius curve concave easterly and with a central angle of 34 deg. 30 min., thence N 42 deg. 52 min. E 770.77 ft. to the point of beginning, containing 11.15 acres more or less,

for highway pruposes, and containing 11.15 acres of land; that pursuant to said application a commission was appointed to condemn said land and to assess the damages which the plaintiffs would sustain by reason of such condemnation; that on the 14th day of March, 1930, the said condemnation commissioners condemned the parcel of land above described through the farm owned by the plaintiff C. C. Hakes and above described, and that the amount so assessed and awarded as damages is wholly inadequate.

That the defendants have condemned said parcel of land for the purpose of constructing a highway thereon which will be known and designated as primary highway No.16; that in constructing said highway a grade will be built, cuts and fills will be made, and paving will be constructed upon said grade; that said highway will carry a large volume of traffic; that the course of said highway through said farm is diagonal and circular; that four of the six forty/acre tracts constituting said farm will be bi-sected and severed by said highway in such a manner that the land on either side thereof will be left in fields of irregular size and shape; that the land taken for said purpose is the most productive and valuable land in said farm; that the fields composing said farm will be left in such condition and shape that they cannot be operated with power machinery; that the cost of operating said farm will be greatly increased by reason of the location of said highway; that substantially one hundred acres of said farm will be left on the east and south side of said highway, and will be severed from the balance of the farm and from the buildings located upon the farm; that the land taken from said farm for highway purposes as aforesaid will be left unfenced, and that it will be necessary to construct and forever maintain 570 rods of fence, in addition to the fences now existing; that the width of the land condemned for highway purposes is from one hundred feet to one hundred twenty feet, and that it will be necessary to keep the weeds cut which will grow within said highway right of way; that in addition to the land condemned for highway purposes the use of 2.36 acres of said farm along the fences will be lost, and the weeds which will grow along said fences will have to be cut, and a great amount of labor will be entailed in so doing; that in operating said farm it will be necessary to cross said public highway with livestock, teams, wagons and farming implements,

and it will be impossible to drive cattle and hogs acress said highway and that it will be hazardous to cross the same with teams and farm implements; that prior to the condemnation of said land there were no pointed rows in any of the fields of said farm; that by reason of the condemnation of said land all of the fields in the four forty acre tracts thereof intersected by said highway will have pointed rows and the cost of operating the farm will be greatly enhanced by reason thereof; that there will be many corners in said farm which cannot be cultivated at all, because of the sharp points which will be left in the corners of the fields after said highway is constructed; and that the location and existence of said public highway through said farm will be a great inconvenience in the use and operation of said farm and will greatly lessen the value thereof and render the same unsalable.

That by reason of the condemnation, taking and appropriation of said land for highway purposes, as aforesaid, the plaintiffs have sustained great damages, not only for the value of the land taken, but for injuries resulting to the balance of said land by reason of the use to be made of that portion of the farm which has been condemned; that the fair and reasonable market value of the land condemned and taken for highway purposes as aforesaid is the sum of $2787.50; that the cost of constructing and maintaining fences along the land condemned for highway purposes as aforesaid is the sum of $2232.00; that the fair and reasonable value of the cost of cutting the weeds within the right of way and along the fences of said highway is the sum of $1500.00; that the fair and reasonable value of the loss of the use of the 2.36 acres of ground along the fences which will have to be built along said highway and which cannot be farmed is the sum of $472.00; that the fair and reasonable market value of the 160 acres of said farm which will be intersected by said highway immediately before the condemnation thereof was $29,800.00 that the fair and reasonable market value of the 148.85 acres of land which will be left in said tract after said land is taken and appropriated for highway purposes is the sum of $14,885.00; that by reason of the condemnation of said land and the construction of said public highway through the same and the inconveniences which will result because thereof and the consequent great reduction in the market value of said farm, the plaintiffs have been damaged in the sum of $14,915.00; that by reason of the condemnation of said land and the construction of said highway and inconveniences which will result therefrom, the market value of the west eighty acres of said land has been reduced at least $50.00 per acre, and plaintiffs have sustained a damage of $4,000.00 to that portion of said farm; that the aggregate of the items of damage hereinabove specified is the sum of $25,906.50; that the fair and reasonable market value of the 228.85 acres left in the said farm of 240 acres, immediately after the condemnation, taking and appropriation of 11.15 acres thereof for highway purposes, is not to exceed $75.00 per acre, or $17,163.75, and that the difference between the fair and reasonable market value of said farm immediately before said condemnation, taking and appropriation of a part thereof for highway purposes and immediately after the condemnation taking and appropriation of a part thereof for highway purposes is $24,836.25; and that plaintiffs have sustained damages by reason of the condemnation, taking and appropriation of a portion of said land for highway purposes, in the sum of $25,000.00.

That plaintiffs have appealed from the award of damages made by said condemnation commissioners as aforesaid, and that this petition is filed in accordance with said appeal and in obedience to the statute pertaining thereto.

WHEREFORE, plaintiffs pray that the damages which they have sustained by reason of the condemnation, taking and appropriation of said land for highway purposes be assessed in the sum of $25,000.00 with interest thereon at six per cent per annum from the 14th day of March, 1930, and that they may have judgment against the defendants for the costs of this action.

Percival & Wilkinson
Thomas J. Bray
Attorneys for Plaintiffs.

IN THE MATTER OF THE CONDEMNATION OF CERTAIN REAL ESTATE FOR PRIMARY ROAD PURPOSES BY THE STATE HIGHWAY COMMISSION OF THE STATE OF IOWA IN MADISON COUNTY.

Project No. P-173.
NOTICE OF APPEAL.

TO THE STATE OF IOWA AND STATE HIGHWAY COMMISSION OF THE STATE OF IOWA, OR TO JOHN FLETCHER, ATTORNEY GENERAL OF THE STATE OF IOWA, AND MAXWELL A. O'BRIEN, ASSISTANT ATTORNEY GENERAL OF THE STATE OF IOWA, ATTORNEYS FOR THE STATE OF IOWA AND THE STATE HIGHWAY COMMISSION OF THE STATE OF IOWA, AND TO JOHN K. SAWYER, SHERIFF OF MADISON COUNTY, IOWA:

You and each of you are hereby notified that C. C. Hakes, as owner, and Titus Loan & Investment Company of Muscatine, Iowa, as the holder of mortgages upon the following described real estate, situated in Madison County, Iowa, to-wit: The West Half of the Southeast Quarter (SE¼) and the Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) of Sectionn Fourteen (14) and the North Half of the Northwest Quarter (NW¼) of Section Twenty-three (23), and the Northeast Quarter (NE¼) of the Northeast Quarter (NE¼) of Section Twenty-two (22), all in Township Seventy-four (74) North, Range Twenty-eight (28), West of the Fifth P. M., have appealed to the District Court of Iowa, in and for Madison County, from the award of damages made by the condemnation commissioners appointed in the above entitled matter awarding as damages the sum of $12,250.00 for the taking by the State of Iowa and State Highway Commission of the State of Iowa for primary road purposes of that part of the above described real estate, described as follows:

> Commencing at the N.W. Corner of the SW¼ SE¼ Sec. 14, T74N. R28W, thence S51.31 ft. to the point of beginning; Thence N.42 deg.52 min. E 798.63 ft., thence N 41 deg. 26 min. 4 sec. E400.12 ft., thence N.42 deg. 52 min. E. 681.79 ft. thence S. 0 deg. 50 min. E 173.69 ft., thence S 42 deg. 52 min. W 556.22 ft., thence S 44 deg. 17 min. 56 sec. W 400.12 ft., thence S 42 deg. 52 min. W 1569.4 ft. thence Southwesterly 1119.89 ft. along a 1860 ft. radius curve concave easterly and with a central angle of 34 deg. 30 min. thence S 8 deg. 22. min. W 948.05 ft., thence S.89 deg. 47 min. W 101.13 ft. thence N.8 deg. 22 min. E 963.14 ft., thence northeasterly 1180.11 ft. along a 1960 ft. radius curve concave easterly and with a central angle of 34 deg. 30 min., thence N 42 deg. 52 min. E 770.77 ft. to the point of beginning, containing 11.15 acres. more or less,

and which said award was made by said condemnation commissioners on the 14th day of March, 1930, and that said appeal will be heard by said court at the May term thereof, which will commence on the 6th day of May, 1930, or as soon thereafter as the same may be reached.

You are further notified that the petition of appellants will be filed in the office of the Clerk of the District Court of Iowa, in and for Madison County, on or before the first day of the May 1930 term of said Court, stating specifically the items of damage and the amount thereof.

Signed the 11th day of April, 1930

C. C. Hakes
Titus Loan and Investment Company
of Muscatine, Iowa

By Percival & Wilkinson
Thomas J. Bray
Their Attorneys.

ACCEPTANCE OF SERVICE.

Service of the within Notice of Appeal is hereby accepted and receipt of copy thereof acknowledged at Des Moines, Iowa, this 12 day of April, 1930.

John Fletcher
ATTORNEY GENERAL OF IOWA,
Maxwell A. O'Brien
ASSISTANT ATTORNEY GENERAL OF IOWA,
Attorneys for State of Iowa and
State Highway Commission of the
State of Iowa.

Service of the within Notice of Appeal is hereby accepted and receipt of copy thereof acknowledged at Winterset, Iowa, this 12 day of April 1930.

John K. Sawyer
Sheriff of Madison County, Iowa.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR MADISON COUNTY
MAY TERM A. D. 1930

C. C. HAKES and TITUS LOAN & INVESTMENT COMPANY OF MUSCATINE, IOWA, Plaintiffs. : At Law

-vs- : No. 14658

STATE OF IOWA AND STATE HIGHWAY COMMISSION of the STATE OF IOWA, Defendants : Request for Instructions

Come now the Plaintiffs, at the conclusion of the evidence and before the argument to the Jury has commenced, and request the Court to give to the Jury the following instructions numbered 1 to 2 inclusive.

Percival & Wilkinson
Thomas J. Bray
ATTORNEYS FOR PLAINTIFFS.

Our Constitution provides that private property shall not be taken for public use without just compensation first being made, or, secured to be made to the owner thereof, as soon as the damages shall be assessed by a Jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.

Refused Plff. Excepts

W. S. Cooper, Judge.

The amount of damages to be awarded to the Plaintiffs is not limited to the value of the land taken, but includes such damages to the entire farm of two hundred forty (240) acres owned by the Plaintiff, Hakes, as result proximately from the use for which the land is taken. All maters, either present or future, that necessarily and proximately affect the market value of the farm by the appropriation and proper use of the condemned portion for the purpose for which it is taken, may be considered in assessing the damages. Whatever makes the farm a less desirable farm affects its market value.

Refused Plff.Excepts
W. S. Cooper, Judge

IN THE DISTRICT COURT OF IOWA IN AND FOR MADISON COUNTY.

C. C. Hakes and Titus Loan & Investment Company of Muscatine, Iowa, Plaintiff, : No. 14658 Law.

vs. : REPLY.

State of Iowa and Iowa State Highway Commission, Defendants.

Come now the plaintiffs and, for reply to the answer and amendment to answer filed herein by the defendants, state:

That they deny each and every affirmative statement and allegation contained in said answer and amendment thereto.

Further replying to said answer, plaintiffs allege that if the said highway project contemplates a stock pass five feet by seven feet beneath the surface of said highway, the same is too small to be of any practical benefit and is wholly inadequate for the purpose of moving stock from one side of said highway to the other, or for any other purpose connected with the operation of said farm.

WHEREFORE, plaintiffs renew the prayer of their petition.

Percival & Wilkinson
Thomas J. Bray
Attorneys for Plaintiffs.

IN THE DISTRICT COURT OF IOWA IN AND FOR MADISON COUNTY.

C. C. HAKES and TITUS LOAN AND INVESTMENT COMPANY, Plaintiffs.

-vs-

STATE OF IOWA, and IOWA STATE HIGHWAY COMMISSION Defendants.

INSTRUCTIONS REQUESTED BY THE DEFENDANTS, STATE OF IOWA and STATE HIGHWAY COMMISSION.

Comes now the defendants, State of Iowa and State Highway Commission herein, and before

the commencement of Arguments and after the close of all the testimony, requests the Court to give to the jury the following Instructions, No 1 to 10 inclusive, with the same force and effect as though given by the Court upon its own motion.

Signed this 28 day of May A. D. 1930.

Maxwell A. O'Brien
C. A. Robbins
Attorneys for the Defendants.

INSTRUCTION NO. 1.

In this case the burden of proof is on the plaintiffs to establish by a preponderance of the evidence the amount of damages he has suffered by reason of the establishment of said highway. By "burden of proof" is meant the obligation imposed on a person who asserts a fact in dispute to prove such fact; and in this case such burden is on the plaintiffs, and such proof must be by a preponderance of the evidence.

By "perponderance of the evidence," as the words themselves imply, is meant the greater weight thereof. This is not alone nor necessarily determined by the greater number of witnesses testifying upon the one side or the other of a disputed question, but it is that evidence which in your judgment is the more credible and convincing, and which carries to your minds the greater convincing force. It is for you to weigh the evidence, and for you to determine where the preponderance or greater weight thereof lies on the issues here in dispute.

Refused- Deft. Excepts
W. S. Cooper, Judge.

INSTRUCTION NO. 2.

There is a sound rule of law which requires anyone who has suffered or claims to have suffered damages at the hands of another, to minimize and reduce such damages so far as reasonable and ordinary care, foresight, and intelligence will permit; for the law will not allow him to pile up feigned or unnecessary items of injury, or such as he himself might in reason obviate or void.

So in this case, plaintiffs cannot in fairness claim damages for any consequential item or inconvenience which by reasonable care, foresight, and planning on his part could be avoided; and in determining upon the reasonable fair market value of the premises after the establishment of the road, you should have in mind an owner of ordinary intelligence and prudence, who would plan and intend with ordinary intelligence to make the best use of the farm as he finds it, out as it is by the highway in question.

Refused-Deft.Excepts
W. S. Cooper, Judge.

INSTRUCTION NO. 3.

The term "fair and reasonable market value" as used in these instructions means the fair value of plaintiffs' land in the open market between a person who desires but is not compelled to sell, and a person who is willing to purchase, where both seller and purchaser are action freely, intelligently and voluntarily in bargaining for the sale and purchase of such land. The term does not mean what could be obtained for such land under peculiar circumstances when greater than its fair price could be procured, nor its speculative value, nor the value resulting from the necessity of either buyer or seller, nor on the other hand, does such term mean the price which the property would bring at a forced sale.

Refused- Deft. Excepts
W. S. Cooper, Judge.

INSTRUCTION NO.4.

In arriving at the difference in value of the plaintiffs' farm before and after the condemnation of the highway across it, you should consider such matters directly resulting from the condemnation of the highway as would reasonably appear to an intending purchaser to lessen the value of the farm, insofar as shown by the evidence; but you are not authorized to consider any speculative, imaginary, or remote matters. So possibility of injury to persons or

property while attempting to cross the highway by reason of the reckless or out of the ordinary use of the highway by members of the public is not a matter to be considered by you.

Refused- Deft- Excepts.
W. S. Cooper, Judge.

INSTRUCTION NO.5.

On arriving at the damages, if any, which the plaintiffs have sustained in this cause, you are instructed not to consider the cost of building additional fences along such new highway and the maintenance or keeping the same in repair.

Refused- Deft. Excepts.
W. S. Cooper, Judge

INSTRUCTION NO. 6.

In arriving at the damages sustained by the plaintiffs by reason of the condemnation and appropriation of the land for highway purposes, you may consider only such matters directly resulting from the condemnation and appropriation of the highway across plaintiff' land and such as would reasonably appear to an intended purchaser to lessen its value, but you are not authorized to consider speculative, contingent or remote items.

Refused-Deft. Excepts,
W. S. Cooper, Judge

INSTRUCTION NO. 7.

You are instructed that in fixing the amount of plaintiffs' damages you should exercise your common sense and general knowledge of men and things, and weigh the testimony of the witnesses in the light of such knowledge and so endeavor to arrive at a just and true verdict, giving neither more nor less than "just compensation".

Refused, Deft. Excepts.
W. S. Cooper, Judge.

INSTRUCTION NO. 8.

You are instructed that it is the law of this State that all property owned or held by individuals is held or owned subject to the right of the State to take it by condemnation proceedings if it is necessary for public use. This right of the State is known as "eminent domain" and the fact as to whether or not the owner of land is willing to sell the same to the State is immaterial; and is not to be considered in any way as affecting the rights of the parties. When the State exercises the right of eminent domain, and takes property by condemnation from the individual, it is required by law to pay the owner of the land just conpensation therefor. The law further provides that in determining the amount of just compensation which the owner of the land condemned will be entitled to for the land thus condemned and the establishement of the improvement, that any benefits or advantages that may accrue to the balance of the tract from which the condemned strip is taken shall not be taken into consideration in any way.

Refused, Deft. Excepts
W. S. Cooper, Judge.

INSTRUCTION NO. 9.

You are instructed that in arriving at the amount of your verdict it will not be proper for you to agree that you will abide by a verdict obtained by each of you setting down the amount you may consider the plaintiffs entitled to, and then adding the several amounts together and dividing by twelve. Such a verdict would be known as a quotient verdict, and would not be permitted to stand.

Refused-Deft Excepts
W. S. Cooper, Judge;

No. 10

You are instructed that all testimony brought out on the direct examination of witnesses concerning the value of parcels or tracts of the farm in controversy also in reguard to the cost of fencing is withdrawn from your consideration & you will not consider the the same except as brought out on the cross-examination of the witnesses & then only as affecting the

wright to be given their testimony

Refused- Deft. Excepts
W. S. Cooper, Judge.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR MADISON COUNTY.
MAY TERM, 1930.

C. C. Hakes, et al., Plffs.,)
vs.) O R D E R.
The State of Iowa, et al.,)
Defts.

I t appearing to the court and all parties hereto consenting that it is proper and advisable that the jury trying this case have a view of the real estate involved in this condemnation proceedings, it is ordered that John K. Sawyer, Sheriff pf this county, be, and he is appointed for the purpose of conducting the jury to said premises, and showing said premises to the jury, conducting the jury along the right of way sought to be condemned, also around the boundries of said premises, at least so far as it can be done by the public highway, and to such other points on the premises as will enable the jury to have a view of the entire premises.

It is further ordered that H. H. Goods, deputy Sheriff of this county, and Mrs. John K. Sawyer be, and they are appointed to assist the said Sheriff in the above, and that said officers permit no other persons to speak to the jurors while under their conduct in making such inspection of the premises, or in going to or returning from the same.

Dated this May 26th, 1930.

W. S. Cooper Judge.

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR MADISON COUNTY.
MAY TERM, 1930.

C. C. Hakes, et al., Plffs.,)
vs.) O R D E R.
The State of Iowa, et al., Defts.)

It appearing to the court and all parties hereto consenting that it is proper and advisable that the jury trying this case have a view of the real estate involved in this condemnation proceedings, it is ordered that John K. Sawyer, Sheriff of this county, be and he is appointed for the purpose of conducting the jury to said premises, and showing said premises to the jury, conducting the jury along the right of way sought to be condemned, also around the boundries of said premises, at last so far as it can be done by the public highway, and to such other points on the premises as will enable the jury to have a view of the entire premises.

It is further ordered that H. H. Goods, deputy Sheriff of this county, and Mrs. John K. Sawyer be, and they are appointed to assist the said Sheriff in the above, and that said officers permit no other persons to speak to the jurors while under their conduct in making such inspection of the premises, or in going to or returning from the same.

Dated this May 26th, 1930

W. S. Cooper Judge.

State of Iowa)
) SS.
Madison County)

I, John K. Sawyer, Sheriff of Madison County, Iowa certify that the within order came into my hands on the 26th day of May 1930 and on the same day between the hours of 1:00 P. M. and 3:30 P. M. I executed the same in the manner stated in the within order.

John K. Sawyer, Sheriff.

Mileage transporting
The Jury & Special Bailiffs.
7.50

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR MADISON COUNTY.
MAY 1930 TERM.

C. C. Hakes and Titus Loan and Investment Company of Davenport Iowa; Plaintiffs.

vs. At Law.

State of Iowa and State Highway Commission of the State of Iowa; defendants. No. 14658.

Judgment.

On the 29th day of May 1930 the above parties appeared as follows: Plaintiffs appeared in person and by Thomas J. Bray of Oskaloosa and Percival & Wilkinson of Winterset. Defendants appeared by Maxwell A. O'Brien Assistant Attorney General and C. A. Robbins of Winterset.

Jury was empaneled and sworn and cause proceeded to trial.

Now on this 29th day of May 1930 the jury returned its verdict finding that the real estate described in the petition through which Primary Road No. 16 passes is damaged in the amount of $11976.60

It is therefore ordered and adjudged that the said real estate is damaged in the amount of $ Eleven Thousand Nine Hundred Seventy-six & 60/100 Dollars by reason of the establishment of Primary Road No. 16 throught the same, together with interest thereon at six (6) per cent from May 29, 1930.

It is further ordered that plaintiffs pay the costs of this trial taxed at $166.40 and that execution issue therefor.

To all adverse rullings and orders each party duly excepts.

W. S. Cooper, Judge

IOWA STATE HIGHWAY COMMISSION

AMES, IOWA,
MAY 5, 1930

J. K. Sawyer, Sheriff
Madison County
Winterset, Iowa

Dear Sir:

We enclose you herewith our Contingent Fund Warrant No 73418 for $15.60, in payment of the Recorder's fee in the matter of condemnation of land of C. C. Hakes, et al, for right of way purposes.

We assume that you are still holding the Hakes warrant and will continue to hold it in your possession until the appeal case has been determined.

We are informed by our attorney at Winterset that the Recorder refuses to release the papers filed in that office so that you can file them with the Clerk until the recording fee is paid. There has, of course, been no reluctance on our part to pay the recording fee. It was only today that we were given information as to the amount of such fee.

Yours very truly,
IOWA STATE HIGHWAY COMMISSION

By C. R. Jones
C. R. Jones, Auditor

CRJ:LL

Ex. "B"

IOWA STATE HIGHWAY COMMISSION
AMES, IOWA,
April 24, 1930

John K. Sawyer, Sheriff
Madison County
Winterset, Iowa

P-173, Madison

Dear Sir:

We hand you herewith our Contingent Fund warrants drawn in favor of property owners and in accord with the awards made by the condemnation jury for Project P-173, Madison County, as follows:

C. C. Hakes and Titus Loan & Investment Company	$12,250.00
Guy Williams	250.00
Alice Doud, et al	28.00

You will please tender the $250.00 warrant to Guy Williams, and also tender the $28.00

warrant. Tender may be made by registered mail.

In the case of C. C. Hakes the Highway Commission has appealed from the award of the condemnation commission. We nevertheless deposit with you the amount of the award, which you are to hold pending the termination of the appeal case.

Yours very truly,
IOWA STATE HIGHWAY COMMISSION

BY C. R. Jones.
C. R. Jones, Auditor.

CRJ:LL

Ex. "A"

In the District Court of Iowa, in and for Madison County

C. C. Hakes et.al. Plaintiffs (Number_____Law

vs. (Stipulation as to

State of Iowa, and Iowa State Highway Commission (additional facts.

The plaintiffs desiring to show further facts, as bearing upon the question of interest upon the award made by the trial Jury, and the reporter being absent, it is agreed by the parties hereto that accompanying the letter to the Sheriff of this county which is hereto attached marked Exhibit"A", was a warrant in favor of plaintiffs for $12,250.00 the amount of the award by the sheriffs Jury. That with reference to said warrant the sheriff also received the letter exhibit "B", and that On June 9th or 10th, 1930, said warrant was returned to the State Highway commission at its request by said sheriff, in order that a new warrant for the amount found by the trial Jury might be forwarded in its stead.

It is further agreed that Defendants began the construction of a cattle pass near the barns on said premises on the 11th day of June 1930, which was the first construction work done while the defendants agree to said facts for the purpose avoiding the necessity of recalling the reporter who has returned to his home, the defendants object to said facts and exhibits as being immaterial, incompetent and irrelevent.

Percival & Wilkinson
Attys for Plaintiffs

John Fletcher Atty Genl.
Maxwell A. O'Brien Assistant, Attys

C. A. Robbins Attys for Defts.

CALENDER ENTRIES MADE BY
JUDGE W. S. COOPER, continued.

C. C. Hakes, et al vs State of Iowa, et al — No.14658 Law — Time extended to file Motion.

Now at this time to-wit: this 9th day of June A. D. 1930 this cause comes on for hearing before the Court and the time for filing motion for new trial and exceptions to instructions is extended to June 14th, 1930.

Record "AA" page 379.

CALENDAR ENTRIED MADE BY
JUDGE W. S. COOPER, continued.

C. C. Hakes, et al vs State of Iowa, et al — No. 14758 Law — Trial Continued.

State of Iowa, et al

Now at this time to-wit: this 28th day of May A. D. 1930 this case is being tried before a Jury, it is continued from the previous day. Testimony is closed and the arguments began.

Record "AA" page 341.

C. C. Hakes, et al vs State of Iowa, et al — No. 14658 Law — Verdict of the Jury.

Now at this time to-wit: this 29th day of May A. D. 1930 this cause is being tried before the Jury and trial is continued.

Trial concluded, Jury is instructed and retire in charge of sworn bailiff at 1:45 P. M. Jury return into Court for further instructions, they are further instructed and retire. The Jury return into Court with the following verdict and Special findings:

Form No. 1.

We, the Jury, assess the damages to Plaintiffs land, Primary road number Sixteen at Eleven Thousand Nine Hundred Seventy-six 60/,00 Dollars. ($11,976.60).

W. P. Benge
Foreman.

In addition to your general verdict the court on its own motion submits to you for your answer two special interrogatories, which are set out below. You will insert below each interrogatory as an answer the amount. in dollars, which you find in answer to each interrogatory respectively, and sign each answer in the same manner in which you sign your general verdict and return the same with your general verdict.

The special interrogatories which should be answered are as follows:

FIRST. What do you find to be the fair and reasonable market value of plaintiffs farm of 240 acres on March 14th, 1930, before the location of the public highway across the same, in the condition in which it then was?

Answer. One Hundred Thirty Dollars per acre ($130.00)

W. P . Benge
Foreman.

SECOND. What do you find to be the fair and reasonable market value per acre of that part of plaintiff's farm of 228.85 acres, which remains after the location and establishment of the public highway across the same in its then condition, without considering the benefits, if any,

Answer. Eighty-four Dollars per acre ($84.00).

W. P. Benge
Foreman.

The Jury is discharged from this case, Judgment and award as per entry signed.
Record "AA" page 344.

CALENDAR ENTRIES MADE BY JUDGE W. S. COOPER

C. C. Hakes, et al — No. 14658 Law

vs

State of Iowa, et al — Granted leave to file Cross-petition.

Now at this time to-wit: this 19th day of May A. D. 1930 this cause comes on for hearing before the Court and the Defendant is granted leave to file cross-petition.

Record "AA" page 310.

C. C. Hakes at al — No.14658 Law

vs

State of Iowa, and Iowa State Highway Commission et al — Jury empanelled and Trial begins.

Now at this time to-wit: this 26th day of May A. D. 1930 this cause comes on for trial before a Jury.

Plaintiffs' motion to strike defendants' Cross-petition sustained, defendants except. plaintiffs' motion to strike parts of answer overruled, plaintiffs except.

The Plaintiffs appeared in person and by their attorneys Thos J. Bray and Percival and Wilkinson. Defendants appear by Maxwell O'Brien and C. A. Robbins, their attorneys.

The following named Jurors to-wit:- J. A. Haynes, Arthur Eldridge, Fannie McDonald. G. C. Mills, Mildred Allgeyer, C. J. Wagner, Theo Harrell, Earnest Slavens, J. P. Small, Elsie Miller, W. P. Benge, and Stella DeVault are duly and legally empanelled to well and truly try the issues joined in this case and to render a true verdict in accordance with the evidence and the law given in charge by the Court.

It is ordered by the Court that the Jury make an examination of the premises.

Miscellaneous Record, No. 21, Madison County, Iowa.

ACME-BLACKMAR CO. BURLINGTON 10100

Record "AA" page 333.

C. C. Hakes, et al

No. 14658 Law

vs

State of Iowa, and Iowa State Highway Commission, et al

Trial Continued.

Now at this time to-wit: this 27th day of May A. D. 1930 this cause comes on for further trial before the Jury and additional testimony is being introduced, trail is continued from the previous day

Record "AA" page 337.

C. C. Hakes, et al

No. 14658 Law

vs

Time extended to file Motion

State of Iowa, et al

Now at this time to-wit: this 3rd day of June A. D. 1930 this cause comes on for hearing before the Court and the time for filing motion for new trial and exceptions to instructions is extended to June 10th, 1930.

See Page 471 for Certificate COMPARED of Settlement Record "AA" page 345